

REMARKS

Applicant gratefully acknowledges the courtesy of a personal interview on February 19, 2008, in which Examiner Ware, Dr. Sydney Finegold (the inventor), and Minh-Quan K. Pham discussed several issues in respect to the pending application. During the interview, the Farmer reference (U.S. Patent No. 6,461,607) was discussed with regard to the claims. The Examiner agreed that Farmer does not disclose separate administration of an antimicrobial and a probiotic; and that a claim amendment that recite the administration of the probiotic subsequent to the antimicrobial would overcome the rejection over Farmer. Additionally, the Examiner agreed that the claims are no longer rejected over Perry (U.S. Patent No. 6,203,797).

The Office Action dated August 27, 2007, has been fully considered. The present Amendment is intended to be a complete response thereto and to place the case in condition for allowance.

Claims 1-3 and 10-17 are pending. Claims 4-9 have been cancelled. Claim 1 has been amended to recite that the administration of the probiotic is subsequently to the administration of the antibiotic. Support for this amendment is found, *inter alia*, in claim 9 as originally filed. No new matter is added.

THE CLAIMS ARE NOT ANTICIPATED

Claims 1-3 and 9-14 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Farmer (U.S. Patent No. 6,461,607). Applicant respectfully traverses the rejection.

To anticipate a claim, the reference must teach every element of the claim. *See* MPEP § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v.*

Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required. *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Farmer fails to disclose the administration of the probiotic subsequent to the administration of the antimicrobial, as currently recited by claim 1. Farmer discloses two aspects: 1) coadministration of probiotic and antimicrobial (see column 5, line 61, to column 7, line 61); and 2) administration of probiotic alone (see column 7, line 62, to column 9, line 16). Neither of these anticipate the present invention which recites that the administration of the probiotic is subsequent to the administration of the antimicrobial. These are separate administration of the antimicrobial and the probiotic. As agreed by the Examiner during the interview, this is not disclosed by Farmer. Therefore, the reference cannot anticipate the present invention within the meaning of 35 U.S.C. § 102. Accordingly, Applicant respectfully requests withdrawal of the rejection.

THE CLAIMS ARE NOT OBVIOUS

Claim 15 stand rejected under 35 U.S.C. § 103(a) as being obvious over Farmer in view of Macina (U.S. Patent No. 6,962,779). Applicant respectfully traverses the rejection.

To establish a *prima facie* case of obviousness, there must be a rationale to support a conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 82 USPQ2d 1385, 1395-97 (2007). “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the

reason(s) why the claimed invention would have been obvious.” MPEP 2143. This rationale should be made explicit. *Id.*

The deficiency of Farmer is discussed above. The Examiner relies on Macina to show that “radionuclides have therapeutic effects.” Office Action, page 4. However, because this reference still does not satisfy the deficiency of Farmer, the combination of the references still does not teach every element of the claimed invention.

Independently, Applicant respectfully submits that there is no rationale to combine the teachings of Farmer and Macina. Farmer discloses the coadministration of a probiotic with an antimicrobial to mitigate gastrointestinal tract pathogens. Macina discloses the use of radionuclides for the treatment of gastrointestinal cancer. Specifically, Macina discloses the following:

For patients diagnosed with a gastrointestinal cancer, injection of an antibody which specifically binds CC2 can also have a therapeutic benefit. The antibody may exert its therapeutic effect alone. Alternatively, the antibody may be conjugated to a cytotoxic agent such as a drug, toxin or radionuclide to enhance its therapeutic effect.

See column 8, lines 34-39. Thus, the therapeutic effect of the radionuclide, as taught by Macina, is different than the therapeutic effect of the antimicrobial of Farmer. The radionuclide is used to kill cancer cells, while the antimicrobial is used to eliminate pathogenic bacteria. Thus, because their different therapeutic effects, one of ordinary skill in the art would have no rationale to substitute the radionuclide of Macina for the antimicrobial of Farmer.

Therefore, for the reasons note, the present invention is not obvious over Farmer in view of Macina. Accordingly, Applicant respectfully requests withdrawal of the rejection.

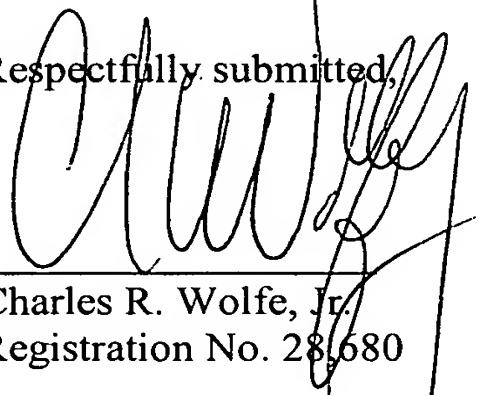
CONCLUSION

Applicant has responded to the Office Action mailed August 27, 2007. All pending claims are now believed to be allowable and favorable action is respectfully requested.

In the event that there are any questions relating to this Amendment or to the application in general, it would be appreciated if the examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (111828.0113). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time. Any fees due are authorized above.

Date: 2/26/08

Respectfully submitted,

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